

APPEAL NO. 032574
FILED NOVEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 4, 2003. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) was not injured in the course and scope of her employment on or about _____; that the appellant/cross-respondent (self-insured) waived the right to contest the compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022; that because the carrier waived the right to contest compensability, the claimed injury is compensable; that the claimant did not have disability; and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under another health insurance policy. The self-insured appeals the hearing officer's waiver and election-of-remedies determinations and, for reasons that are not clear since the conclusion was in the carrier's favor, the conclusion of law that the claimant did not have disability. The claimant appeals the hearing officer's determinations that she was not injured in the course and scope of her employment on _____, and that she did not have disability. Both parties filed responses to the opposition's appeal, urging affirmance of the determinations made in their favor.

DECISION

Affirmed.

SELF-INSURED'S REQUEST FOR REVIEW

With regard to the waiver issue, the self-insured does not assert that the hearing officer's decision is erroneous given the precedent of Appeals Panel decisions in existence. Rather, the self-insured urges that we should reevaluate our interpretation of Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) and that, despite the fact that it recognizes that Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) has been interpreted to have retroactive application, we should "look more leniently at decisions that predate" the Downs decision. We decline to depart from our precedent with regard to our interpretation of Williamson and Downs. Accordingly, we perceive no error in the hearing officer's determinations on these issues and find that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the waiver determination, we similarly affirm the hearing officer's election-of-remedies determination. Texas Workers' Compensation Commission Appeal No. 030793-s, decided May 16, 2003.

CLAIMANT'S REQUEST FOR REVIEW

Whether the claimant was injured in the course and scope of her employment and whether she has disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that these determinations require reversal. Cain, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge